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Supreme Court of the United States

October Term, 1926.

Number 342.

C. J. LONGEST, APPELLANT,

vs.

W. C. LANGFORD AND G. N. PUCKETT, APPELLEES.

BRIEF OF APPELLANT.

STATEMENT OF PLEADINGS.

The appellees filed their suit in the District Court of Jefferson County, Oklahoma, against C. J. Longest, who is the appellant here, which suit was one in ejectment and was for the possession of the following described lands, to wit:

> The north half of the south half of the northeast quarter, and the north half of the northeast quarter of northeast quarter, and northeast quarter of northwest quarter of northeast quarter, and south half of north half of the northeast quarter of Section 14, Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the

southeast quarter of the southeast quarter of Section 8, Township 7 South, Range 3 West.

Appellees derived their title to the lands by virtue of the following facts: That said land was patented to Mary E. Puckett, an intermarried citizen of the Choctaw Tribe of Indians, who died prior to the admission of the State into the Union, and at a time when Mansfield's Digest of the State of Arkansas was in force in the Indian Territory; that at the time of her death she left surviving her her husband George N. Puckett, who is not a member of any Indian Tribe, but is a white citizen of the United States; that Mary E. Puckett at the time of her death left surviving her several children, some of whom were children from Cocheuner, her first husband and who was a member of the Choctaw Tribe of Indians by blood; and some of the children being the issue born to the marriage between herself and her white husband, George N. Puckett (see page 10 of transcript). The appellant here, who was defendant in the trial court in Jefferson County, Oklahoma, claimed title to the land by virtue of conveyances from the children born to the marriage between Mary E. Puckett and her said Choctaw Indian husband, and denied the title of the appellees on the grounds that at the time of the death of the said Mary E. Puckett she was not in possession of the lands, that she had not selected the same in allotment, and by reason of which the appel

lees were not entitled to the possession of the lands, and this for the good and sufficient reason that no curtesy right existed in the white husband, George N. Puckett, appellee Langford's grantor, for that no title and no inheritable right in the lands of the Chickasaw and Choctaw Nation was vested in Mary E. Puckett at the time of her death, and she, the said Mary E. Puckett, not being actually seized with the land at the time of her death, George N. Puckett, her husband, acquired no curtesy right therein (see page 12 of the transcript).

STATEMENT OF EVIDENCE.

This evidence in the record discloses that Mary E. Puckett died in 1903, near Bokchito, Indian Territory, which is now Bokchito, Oklahoma; that prior to her death she had married a Choctaw Indian by blood by the name of Cocheuner; that from the marriage between Mary E. Puckett and Cocheuner there were several children born. The testimony shows that George N. Puckett was appointed administrator over the estate of his deceased wife, Mary E. Puckett, and that as administrator of such estate he selected and filed upon the lands in controversy in 1905. The testimony further shows that appellant procured deeds from some of the children from the marriage between Mary E. Puckett and Cocheuner, and went into possession of the land. The testimony also shows that appellee W. C. Langford procured deeds from some of

the children of the marriage between Mary E. Puckett and George N. Puckett, and perhaps from some of the children from the marriage between Mary E. Puckett and Cocheuner. The testimony shows also that the only deed relied upon by appellee W. C. Langford was the deed from George N. Puckett. An objection was made to the introduction of this deed, and the objection was overruled. At the conclusion of the testimony in the trial court a demurrer to the evidence was interposed, overruled and exceptions taken.

At page 43 of the transcript is disclosed appellees' exhibit No. 1, which is a certified copy of the application to file on the lands in controversy by George N. Puckett as administrator of the estate of his deceased wife, Mary E. Puckett. This application discloses that George N. Puckett, as such administrator, did not acquire permission from the persons in possession of the land to file thereon. This application to file upon the land is sworn to on July 15th, 1905.

This constituted the testimony on the part of the appellees in the trial court, which is shown commencing at page 24 of the transcript.

The testimony of appellant, defendant in the trial court, is shown commencing at page 34 of the transcript. This testimony shows that George N. Puckett, in the fall

of 1904, came out to Petersburg, which is close to the lands in controversy, to see about collecting rents from the land which he had selected as administrator of his deceased wife, Mary E. Puckett, and being the lands in controversy. The testimony shows that the father of W. F. Bourland was in possession of the land and had dominion and control of it until July 15th, 1904, and had had possession and control of the same continuously for twenty or twenty-five years prior thereto, and that he was holding such possession as a member of the Chickasaw Tribe of Indians; that old man Bourland did not part with the right to said lands, nor did he give George N. Puckett as administrator of the estate of Mary E. Puckett, deceased, a right to select and file on said land. The testimony shows that W. F. Bourland held the land as a part of his father's estate during the fall of 1904, and thereafter the said W. F. Bourland acquired conveyances from two of the children of Mary E. Puckett and Cocheuner, one of the children being David Jasper Cocheuner, and that W. F. Bourland thereafter conveyed such title as he acquired to the appellant C. J. Longest; that the possession of Bourland continued up to 1910, which possession by W. F. Bourland was by a lease from George N. Puckett executed in the fall of 1904, but that appellant C. J. Longest had dominion and control of the interest acquired by him by virtue of the deeds aforesaid.

This constituted the testimony on behalf of appellant, defendant in the trial court. At the conclusion of the testimony motion was made by appellant, defendant in the trial court, for judgment in his behalf, which motion was overruled (see transcript, page 40). On the 14th of February, 1920, the district court of Jefferson County, Oklahoma, entered its judgment in favor of appellees and against appellant (see transcript, page 41).

From the judgment of the district court of Jefferson County an appeal was prosecuted to the Supreme Court of the State of Oklahoma, and the judgment of the trial court was affirmed, as is shown by the opinion of the Supreme Court of the State of Oklahoma shown at page 47 of the transcript, and which will be found reported in 114 Okla. Reporter 50, 242 Pac. Reporter 569, the opinion being by Mr. Justice Clark of the Supreme Court of Oklahoma. There was a dissenting opinion written by Mr. Justice Fred P. Branson, who is at the present time Chief Justice of the Supreme Court of Oklahoma, the dissenting opinion being shown at page 53 of the transcript. From the decision of the Supreme Court of Oklahoma an appeal is prosecuted to this court, wherein is assigned as error, the following:

"First: That the Supreme Court of Oklahoma erred in holding and deciding that the lands described as follows, to wit, the north half of the south half of the northeast quarter, and the north half of the northeast quarter

of the northeast quarter, and the northeast quarter of the northwest quarter of the northeast quarter, and the south half of the north half of the northeast quarter of Section Fourteen (14), Township 7 South, Range 4 West, and the north half of the southeast quarter, and the north half of the southeast quarter of the southeast quarter of Section Eight (8), Township 7 South, Range 3 West, were inherited by G. N. Puckett, the husband of Mary E. Puckett, who was an intermarried citizen of the Choctaw Tribe of Indians, and in this connection this plaintiff in error alleges and says that the record and proceedings disclose that Mary E. Puckett was an intermarried citizen of the Choctaw Tribe of Indians; that her Indian husband died and she thereafter married G. N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, and in this connection the plaintiff in error further alleges and says that the record and proceedings here disclose that the said Mary E. Puckett died more than two years prior to the time that the lands in controversy were selected in her name, and the record and proceedings also disclose that the said Mary E. Puckett was not in possession of the lands at the time of her said death, but that to the contrary the record and proceedings disclose that she was living more than two hundred miles away from said lands, and that at the time of the selection of said land the record and proceedings disclose that one W. F. Bourland was in possession of said land, and by reason of which the said Mary E. Puckett did not die seized and possessed of said land, and by reason of which no right of curtesy could exist as to the lands in controversy whereby the husband, G. N. Puckett, acquired a curtesy right in and to said lands.

"Second: The Supreme Court of Oklahoma erred in holding and deciding that said land descended under Section 22 of the Treaty between the Chickasaws and Choctaws and the United States, ratified September 25th, 1902.

"Third: The Supreme Court of the State of Okla-

homa erred in holding and deciding that the right of curtesy could exist in a cause like the one at bar, where Mary E. Puckett was not in actual possession of said lands at the time of her said death.

"Fourth: The Supreme Court of the State of Oklahoma erred in holding and deciding that a white man could inherit the lands allotted to a member of the Choctaw Tribe of Indians, and also erred in holding and deciding that the right of curtesy exists prior to actual seizin.

"Fifth: The Supreme Court of the State of Oklahoma erred in holding and deciding that W. C. Langford et al. were entitled to possession of said lands."

The testimony in this record is undisputed that Mary E. Puckett was married to a Choctaw Indian by blood prior to her marriage to George N. Puckett; that George N. Puckett was a white citizen of the United States and not a member of any Indian Tribe; that Mary E. Puckett died in 1903, and that George N. Puckett as administrator of said estate, did not select and file upon the lands in controversy until July, 1905; that old man Bourland was in possession of the land in controversy for more than twenty years prior to the selection of the land by George N. Puckett as administrator of the estate of Mary E. Puckett; that Mary E. Puckett at the time of her death had never been upon the lands in controversy, never claimed or asserted any dominion or control of the same, and that she lived a distance of more than one hundred fifty miles from the land at the time of her death. The testimony also shows that the only title that appellees as-

sert is a common law curtesy right in the land. From the foregoing statement, which will not be controverted, the court can readily see that the sole and only question in this cause is whether or not George N. Puckett, a white citizen of the United States and not a member of any Indian Tribe, acquired a common law curtesy right in the land allotted in the name of his deceased wife, Mary E. Puckett, an intermarried citizen of the Choctaw Tribe of Indians, who had died more than twelve months prior to the time that George N. Puckett as administrator of said estate had selected and filed on the land.

ASSIGNMENTS OF ERROR.

Instead of arguing each assignment of error separately, we will present to the court the following:

I.

Mary E. Puckett at the time of her death had no right, title, estate or interest in the lands in controversy.

II.

George N. Puckett acquired no curtesy right in the lands in controversy, by reason of the fact that Mary E. Puckett was not seized with said land at the time of her death.

III.

A white citizen of the United States, such as was George Puckett, could not inherit land selected and allotted to a member of the Choctaw Tribe of Indians prior to the admission of Oklahoma into the Union.

IV.

The right of curtesy does not come by descent, but comes by virtue of the marriage relation.

ARGUMENT.

As to our first proposition, which is as follows:

"Mary E. Puckett, at the time of her death, had no right, title, estate or interest in the lands in controversy,"

we desire to call the court's attention to the case of *Hooks v. Kennard*, 28 Okla. 457, 114 Pac. 744. At page 463 of the Oklahoma Reports, *supra*, it is said:

> "This court has held in several cases that the selection of and the filing upon an allotment of land was the inception and beginning of the title of the

allottee or his heirs, and that, when the patent which is only the evidence of title, is issued, it relates back to the inception of the title. *De Graffenreid* v. *Iowa Land & T. Co.*, 20 Okla. 687, 95 Pac. 624; *Godfrey* v. *Iowa Land & T. Co.*, 21 Okla. 293, 95 Pac. 792; *Irving et al.* v. *Diamond*, 23 Okla. 325, 100 Pac. 557."

See, also:

McKee v. *Henry*, 201 Fed. 74.
Brann v. *Bell*, 192 Fed. 427.
Hayes v. *Barringer*, 168 Fed. 221.

In this connection, permit us to say that the mere right of the allotted land of the Choctaw Nation by Mary E. Puckett during her lifetime was not a vested right before it was exercised, because it was within the power of Congress to withdraw the right to allot at any time Congress saw fit so to do.

See:

Gritts v. *Fisher*, 224 U. S. 640.
Stephens v. *Cherokee Nation*, 174 U. S. 445.
Cherokee Nation v. *Hitchcock*, 187 U. S. 294.
Hayes v. *Barringer*, 168 Fed. 221.
Wallace v. *Adams*, 143 Fed. 716.
Woodbury v. *United States*, 170 Fed. 302.

Actual allotment of the land was necessary to segregate and vest an individual member's interest in the lands of the tribe. See *Choate* v. *Trapp*, 224 U. S. 665.

See, also:

Sizemore v. *Brady*, 235 U. S. 441.
Woodward v. *DeGraffenreid*, 238 U. S. 284.

Franklin v. *Lynch*, 233 U. S. 269.
Mullen v. *Gardner*, 250 U. S. 590.
Gritts v. *Fisher*, 224 U. S. 640.
Bledsoe v. *Wortman*, 35 Okla. 261, 129 Pac. 841.
Sanders v. *Sanders*, 28 Okla. 59, 117 Pac. 338.
Barnett v. *Way*, 29 Okla. 780, 119 Pac. 418.

Now, having demonstrated and shown to the court by the decisions of the Supreme Court of Oklahoma and of this court that no vendible interest in the particular land in controversy was vested in Mary E. Puckett until a selection had been had, although she was a member by intermarriage of the Choctaw Tribe of Indians, we then come to the question as to whether or not her husband, a white citizen of the United States, acquired a curtesy right in the lands in controversy, where the record discloses undisputably that Mary E. Puckett had died more than twelve months prior to the selection of the land, and when the record discloses undisputably the fact that she at no time had ever been in possession of the lands prior to her death, which brings us to our second proposition, which is:

"George N. Puckett acquired no curtesy right in the lands in controversy by reason of the fact that Mary E. Puckett was not seized with said land at the time of her death."

The one basis of an estate by curtesy in the Indian Territory is derived through the act of Congress of May 2nd, 1890 (26 Stat. L. 81), putting in force in the Indian

Territory certain chapters of Mansfield's Digest of the Statutes of Arkansas, among the number being Chapter 20 of Mansfield's Digest, included in Section 566 thereof, which is as follows:

> "The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British parliament in aid of or to supply the defect of the common law made prior to the fourth year of James the First (that are applicable to our own form of government), of a general nature and not local to that kingdom, and not inconsistent with the Constitution and laws of the United States or the constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the general assembly of this state."

Under the common law there was no curtesy unless the wife was seized in deed, meaning possession in fact, actual possession, claiming the freehold interest—*seizin in law not being sufficient*—that is, mere right of action for possession under the common law was not sufficient.

> Greenleaf's Cruise on Real Property, Vol. 1, page 149.
> Tiffany on Real Property, Vol. 1, page 493.

Tiffany on Real Property, Vo. 1., page 491, says:

> "An estate by curtesy may exist in an estate of inheritance, and in no other estate."

We call the court's special attention to the case of *McDaniel* v. *Grace*, 15 Ark. 483, which is on all fours with the case at bar.

We also call the court's attention to the case of ***Hampton*** v. *Cook*, 64 Ark. 353, 62 Am. St. Rep. 194.

We also call the court's attention to the case of *Neelly* v. *Lancaster*, 47 Ark. 175, reported in 58 Am. St. Rep. 752.

We also call to the attention of the court the case of *Owens* v. *Jabine*, 115 S. W. 383 (Ark.), and to this case we wish to call the court's most special attention.

We also call the court's attention to the case of *Harrod* v. *Myers*, 21 Ark. 600.

A curtesy estate is one granted by mere favor of the law of England and has no basis in natural or moral right.

See:

Heath v. *White*, 5 Conn. 228-236.
Day v. *Burgess*, 202 S. W. 911.

The husband is not entitled to curtesy in an expectancy of the deceased wife, nor to curtesy in a mere float or cause of action or privilege or preference right.

17 Corpus Juris 425 says:

"The husband cannot be tenant by the curtesy of a remainder or reversion of his wife expectant on an outstanding particular freehold estate which did not determine during coverture; and this doctrine applies as well to equitable as to legal estates."

This doctrine is particularly emphasized in the case of *McDaniel* v. *Grace*, 15 Ark. 465.

See, also, *Quinn* v. *Ladd*, 39 Ore. 261, 59 Pac. 457. To this case we invite the court's most careful attention.

See, also, *Crowley* v. *Grant*, 127 Pac. 28. Also, *Stoddard* v. *Gibbs*, 23 Fed. Cases No. 13468, this latter opinion having been written by Justice Story, and to which we invite the court's most careful attention. In the opinion written by Justice Story it will be observed that Justice Story goes into all common law authorities, and common law authorities control in matters arising in Indian Territory with respect to curtesy.

In 2 Blackstone 127 it is said:

> "The seizin of the wife must be an actual seizin, or possession of the lands; not a bare right to possess, which is a seizin in law, but an actual possession, which is a seizin in deed. And therefore a man shall not be a tenant by the curtesy of a remainder or reversion."

See, also, the case of *Maupin* v. *Maupin*, 110 S. W. 840. Also, *Parsons* v. *Justice*, 174 S. W. 725. These two cases being from Kentucky.

See, also, *In re Dixon*, 72 S. E. 71, which is from the Supreme Court of North Carolina.

Also, *Sentill* v. *Robeson*, 55 N. C. 310.

See, also, *Evans* v. *Morris*, 136 S. W. 408, which is from the Supreme Court of Missouri.

We also call the court's special attention to the case

of *The Lessee of Mercer et ux* v. *Selden*, 42 U. S. 37, 11 Law. ed. 38, syllabus four being as follows:

> "The general rule of law is, that there must be an entry during coverture, to enable the husband to claim a tenancy by the curtesy."

In the body of the opinion, at page 45 of the Law Edition, it is said:

> "In 1 Coke on Litt., 29, ch. 4, sec. 35, it is said: 'Tenant by the courtesy of England is, where a man taketh a wife seized in fee-simple, or a fee-tail general, or seized as heir-in-tail special, and hath issue by the same wife, male or female, born alive, albeit the issue after dieth or liveth, yet if the wife dies, the husband shall hold the land during his life by the laws of England.'
>
> "'And first, of what seisin a man shall be tenant by the courtesy. There is in law a two-fold seisin, viz., a seisin in deed and a seisin in law. And here Littleton intendeth a seisin in deed, if it may be attained unto, as if a man dieth seized of lands in fee simple, or fee-tail general, and these lands descend to his daughter, and she taketh a husband and hath issue, and dieth before any entry, the husband shall not be tenant by the courtesy; and yet in this case she had a seisin in law; and if she or her husband had during her life entered, he should have been tenant by the courtesy.'
>
> "The wife at common law was endowable where there has been no actual possession, and the reason is, that during coverture she could not take possession of the lands of her husband. *But actual seisin was necessary to enable the husband to claim as tenant by the courtesy. This rule was not inflexible.*"

We also call the court's special attention to the case

of *J. H. Allen et al.* v. *Helena Hanks*, 136 U. S. 300, 34 Law. ed. 414, where, at page 418 of the Law Edition, it is said:

> "When the Constitution of 1868 was adopted, the appellee's husband could have no estate by the curtesy in lands not then owned by her; for, as was said by the Supreme Court of Arkansas in *McDaniel* v. *Grace*, 15 Ark. 465, 483, except when from the nature and circumstances of the real property of the wife, she may be regarded as constructively in possession (as where it consists in wild lands, or it is impossible or impracticable to enter upon them), marriage, actual seisin of the wife, issue, and death of the wife, are all requisite to create an estate by the curtesy; and that the husband was not entitled to his curtesy, according to the common law, unless the wife was seized in fact and in deed. *Mercer* v. *Sheldon*, 42 U. S. 1 How. 37, 54 (11:38, 45); *Davis* v. *Mason*, 26 U. S. 1 Pet. 503, 507 (7:239, 240), 4 Kent. Com. 29, 30."

It is by the Arkansas Statute putting in force the common law that the right of curtesy exists in the case at bar, if any at all. We have cited cases from the Supreme Court of Arkansas, the various states of the Union, by the text book writers, and by this Court, holding that where actual seizin does not exist no right of curtesy exists, and we therefore respectfully submit under this proposition the decision of the Supreme Court of Oklahoma should be reversed.

As to our third proposition, which is as follows:

> "A white citizen of the United States such as was George N. Pucket, could not inherit land selected and

> allotted to a member of the Choctaw Tribe of Indians prior to the admission of Oklahoma into the Union,"

we call the court's attention to the case of *Gillum* v. *Anglin*, 44 Okla. 684, 145 Pac. 1145, where in syllabus one is the following:

> "Upon the death of mixed blood minor children of the Choctaw Tribe of Indians, the fee in their allotments ascend to the parent of tribal blood, and not the parent who has become a citizen of the tribe by virtue of an intermarriage."

It will be noted in the body of the opinion that Mr. Justice Harrison quotes with approval the case of *Shulthis* v. *McDougal*, 170 Fed. 520, where the identical question was before the Eighth Circuit Court of Appeals. It will also be noted that the case of *Pigeon* v. *Buck*, 38 Okla. 101, is quoted with approval. Also the case of *Roberts* v. *Underwood*, 38 Okla. 376. The latter two cases were appealed to the Supreme Court of the United States and there affirmed (see *Pigeon* v. *Buck*, 237 U. S. 386, 59 Law. ed. 1007).

See, also, the case of *McDougal* v. *McKay*, 237 U. S. 372, 59 Law. ed. 1001, where in the body of the opinion, at page 1006, this language is used:

> "His father was the only parent through whom he derived his right, and to the father the land should pass."

And on the same page will be found the following language:

"As the father, George Franklin Berryhill, was of Creek blood, and the mother not, he took a fee simple title to all the land in question. If both parents had been of Creek blood and duly enrolled, each would have taken one-half."

Now, in the case at bar, Mary E. Puckett, the intermarried citizen of the Choctaw Tribe of Indians, had as her first husband, as shown by the transcript, an Indian by blood, and from this marriage children were born. Mary E. Puckett acquired her right as a member of the tribe through her Indian husband, the Indian husband having died, and thereafter Mary E. Puckett married G. N. Puckett, a white man. Mr. Justice Clark in the writing of the opinion in the case at bar, holds that the estate of Mary E. Puckett was cast by descent to the white husband. This, we say, under the decisions cited *supra*, is wrong, for this Court and the Supreme Court of Oklahoma have held that a white citizens cannot inherit under the Arkansas law the land of an Indian by blood.

We wish to call the court's special attention to the case of *In re Estate of Hawkins*, 97 Okla. 195, 223 Pac. 396, where the question arose as to how and in what way an intermarried citizen of the Choctaw Tribe of Indians acquired her right to allotted lands, and how and in what way the land would descend upon the death of the interried citizen, where there was no issue born to the marriage. After reviewing the various provisions of the treaties between the Chickasaws and Choctaws and the United

States, and the decisions of the Circuit Court of Appeals in *Shulthis* v. *McDougal*, *supra*, the Supreme Court of Oklahoma held that the intermarried citizen acquired the allotment from the husband who was of Indian blood; that it was neither an ancestral estate nor a new acquisition; that upon the death of the white, intermarried citizen, the estate would not descend to the white citizen heirs, and that the whole estate would descend to the husband who is an Indian by blood. In other words, it would descend to the Indian by blood to the exclusion of the white heirs.

Now, in the case at bar, this appellant acquired his right from the child of the first marriage and who was of the blood of the ancestor from whom Mary E. Puckett acquired this estate. In other words, Mary E. Puckett acquired the land in controversy from her Indian husband, and the Indian husband being dead, leaving the children by Indian blood, who would inherit to the exclusion of G. N. Puckett. The white husband of Mary E. Puckett does not inherit this property, and when Mr. Justice Clark in his opinion said, in effect, that the right of curtesy came by descent, it is in direct conflict with the decisions of the courts *supra*, for the good and sufficient reason that a white citizen cannot inherit the lands of a member of the tribe prior to the admission of the State of Oklahoma into the Union. We therefore respectfully submit under our third proposition that the judgment of the trial court should be reversed and judgment here entered.

As to our fourth proposition, which is as follows:

> "The right of curtesy does not come by descent, but comes by virtue of the marriage relation,"

we beg to call the court's attention to the case of *Condren v. Marlin*, 113 Okla. 259, 241 Pac. 826, in which Mr. Justice Phelps of the Supreme Court of Oklahoma says at page 261:

> "Therefore, the real question in this case is: Does the estate by the curtesy vest in the husband by descent, or is it an estate acquired by virtue of the marriage relation?"

After putting the question, and after quoting from the various text books and from the various decisions of the various states of the Union, as well as the Supreme Court of the United States, at page 262, says:

> "Therefore, after a careful examination of the authorities cited in the briefs, together with other available authorities, it is our conclusion that, as applied to the facts in this case, the estate by the curtesy does not vest in the husband by descent, but is an estate acquired by virtue of the marriage relation."

We wish to call to the court's attention the real question in the case of Condren v. Marlin, which was this: it was being contended by one of the parties that the estate by curtesy came by descent and the husband being a white person could not take the estate by curtesy, following the line of decisions quoted herein on our third proposition, but the Supreme Court of Oklahoma said that the estate by curtesy was not cast by descent and by reason of which

the white husband was entitled to curtesy in those cases where the four prerequisites were in existence.

Now, in the case at bar Mr. Justice Clark of the Supreme Court of Oklahoma has said that the estate was cast by descent, and in his opinion in the case at bar he does not refer to the case of Condren v. Marlin, nor is the same mentioned. If the estate is cast by descent, then we apply the doctrine laid down in the case of *Gillum* v. *Anglin*, 44 Okla. 684, 145 Pac. 1145; *Stalcup* v. *Mullen*, 49 Okla. 543, 153 Pac. 868; *Pigeon* v. *Buck*, 237 U. S. 386, 38 Okla. 101, 131 Pac. 1083; *McDougal* v. *McKay*, 59 Law. ed. (U. S.) 1001; *Roberts* v. *Underwood*, 38 Okla. 376, 132 Pac. 673, holding that a white citizen of the United States could not inherit the land of a member of the tribe prior to the admission of Oklahoma into the Union.

We respectfully submit that the judgment of the Supreme Court of Oklahoma should be reversed and judgment here entered in favor of this appellant.

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